

EXPORT ADMINISTRATION AUTHORIZATION

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

**A DRAFT OF PROPOSED LEGISLATION TO AMEND AND REAU-
THORIZE THE EXPORT ADMINISTRATION ACT OF 1979**



**APRIL 7, 1983.—Referred to the Committee on Foreign Affairs and
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WASHINGTON: 1983

THE WHITE HOUSE,
Washington, D.C., April 4, 1983.

HON. THOMAS P. O'NEIL, JR.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I herewith transmit for the consideration of the Congress proposed legislation "To amend and reauthorize the Export Administration Act of 1979," together with a section-by-section analysis and supporting justification.

The Export Administration Act provides authority to the President to control exports for reasons of national security, foreign policy, and short supply, and to oppose foreign boycotts. The amendments that we are proposing to this Act provide a balance between strengthening our efforts to protect our national security and foreign policy interests and our efforts to ensure that the business community is not unreasonably constrained in its operations by export controls. In addition, these amendments are intended to improve the administration of the provisions of the Export Administration Act through the reduction of controls where appropriate and through the enhancement of the violation sections of the Act.

I consider enactment of this legislation of great importance to the legislative and budgetary program of this Administration. I would appreciate your efforts in seeing that it is enacted.

Sincerely,

RONALD REAGAN.

A BILL

To amend and reauthorize the Export Administration Act of 1979.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

AMENDMENTS TO FINDINGS

SECTION 1. Section 2 of Pub. L. No. 96-72 is amended as follows:

(1) by striking in paragraph (3), "which would strengthen the Nation's economy.", and substituting in lieu thereof, "consistent with the economic, security, and foreign policy objectives of the United States.";

(2) by striking paragraph (5), redesignating paragraph (4) as paragraph (5), and redesignating paragraphs (7)-(9) as paragraphs (8)-(10), respectively; and

(3) by inserting after paragraph (3):

(3)

"(4) Availability from foreign sources of goods and technology that are controlled by the United States to protect its national security can adversely affect that security."; and

(4) by inserting after paragraph (6),

"(7) The transfer of critical commodities and technical data has made a significant contribution to the military potential of other countries that has been detrimental to the security of the United States, its allies, and other friendly nations, and has necessitated increases in the defense budgets of these nations.".

AMENDMENTS TO DECLARATION OF POLICY

SECTION 2. Section 3 of Pub. L. No. 96-72 is amended as follows:

(1) by striking in paragraph (3) the word "and";

(2) by deleting in paragraph (3) the period which ends the sentence, and adding in lieu thereof, ", and (C) to negotiate bilaterally or multilaterally to eliminate, whenever possible, the availability of goods and technology

from foreign sources that are present in sufficient quantity and are of comparable quality with those controlled or proposed to be controlled for national security purposes in the United States so as to render the controls ineffective in achieving their purposes."

(3) by redesignating paragraphs (10) and (11) as paragraphs (11) and (12), respectively, and inserting after paragraph (9):

"(10) It is the policy of the United States to seek arrangements with those countries not participating in the group known as the Coordinating Committee to restrict the export of U.S. goods and technology that are controlled for national security reasons."; and

(4) by adding new paragraphs (13) and (14) as follows:

"(13) It is the policy of the United States when imposing new foreign policy controls to minimize the impact on pre-existing contracts and on business activities in allied or other friendly countries to the extent consistent with the underlying purpose of the controls.

"(14) It is the policy of the United States to develop licensing mechanisms to minimize the burdens placed on U.S. export trade, particularly U.S. export trade with member countries of COCOM, Australia, and New Zealand.

AMENDMENTS TO GENERAL PROVISIONS

SECTION 3. Section 4 of Pub. L. No. 96-72 is amended as follows:

(1) by deleting in paragraph (2) in subsection (a) "A qualified general license," and substituting in lieu thereof "Licenses";

(2) by modifying subsection (b) to read as follows:

"(b) Control List. -- The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the 'Control List') indicating license requirements for exports to various countries of destination subject to control under this Act."; and

(3) by deleting in subsection (c) "significant" and substituting in lieu thereof "sufficient", and inserting after "to those produced in the United States" the words "so

as to render the controls ineffective in achieving their purposes".

AMENDMENTS TO NATIONAL SECURITY CONTROLS

SECTION 4. Section 5 of Pub. L. No. 96-72 is amended as follows:

(1) in paragraph (1) of subsection (a), by inserting after the first sentence, "This authority includes the power to prohibit or curtail the transfer of goods or technologies within the United States to embassies and affiliates of countries to which exports of these goods or technologies are controlled.";

(2) by deleting subparagraph (B) in paragraph (2) of subsection (a) and by striking "(A)" before the first sentence of paragraph (2) of subsection (a);

(3) by deleting the word "commodity" in the first sentence of paragraph (1) in section (c), and by deleting the second sentence in that paragraph and substituting in lieu thereof:

"The Secretary shall clearly identify on the control list which goods and technical data and countries or destinations are subject to which types of controls under this section.";

(4) by modifying the heading of subsection (d) to read "Militarily Critical Goods and Technologies.";

(5) by modifying subparagraph (B) of paragraph (2) in subsection (d) to read "keystone materials and manufacturing, inspection, and test equipment, and";

(6) by deleting the word "commodity" in paragraph (5) of subsection (d);

(7) by redesignating paragraph (6) of subsection (d) as paragraph (7), and inserting after paragraph (5):

"(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls over the products of that technology and equipment.";

(8) by deleting subsection (e) in its entirety, and redesignating subsections (f)-(l) as (e)-(k), respectively;

(9) in paragraph (1) of subsection (e), as redesignated, by striking "sufficient quality" and substituting in lieu thereof "comparable quality";

(10) in paragraph (2) of subsection (e), as redesignated, by striking "sufficient quality" and substituting in lieu thereof "comparable quality";

(11) by redesignating paragraphs (3)-(6) in subsection (e), as redesignated, as (4)-(7), respectively, and adding a new paragraph (3) as follows:

"(3) The mere capacity of a foreign country to produce items in sufficient quantity and of comparable quality with those controlled by the United States, so as to render the controls ineffective in achieving their purposes, does not, in and of itself, constitute foreign availability.";

(12) by striking in the first sentence of paragraph (5) of subsection (e), as redesignated, "take steps to initiate" and substituting in lieu thereof "actively pursue";

(13) in section (f), as redesignated,

(a) by striking "and qualified general licenses" in the first sentence,

(b) by inserting at the end of the first sentence, "The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology the anticipated needs of the military of countries to which exports are controlled for national security purposes.", and

(3) by deleting from the existing second sentence "by the latest such increase" and substituting in lieu thereof "by the regulations";

(14) by striking in paragraph (6) of subsection (g), as redesignated, "(f)(1)", and substituting in lieu thereof "(e)(1)";

(15) by striking in paragraph (1) of subsection (h), as redesignated, "agreement of the Committee," where it appears the second time and substituting in lieu thereof "list,";

(16) by striking in paragraph (2) of subsection (h), as redesignated, "discussing export control policy issues and issuing policy guidance" and substituting in lieu thereof "providing guidance on export control policy issues";

(17) by striking in paragraph (3) of subsection (h), as redesignated, "reduce" and substituting in lieu thereof "modify";

(18) by inserting in paragraph (4) of subsection (h), as redesignated, after "effective procedures for" the words "administering and";

(19) by inserting after paragraph (4) of subsection (h), as redesignated, paragraphs (5) and (6) as follows:

"(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for COCOM, and improve the structure and function of the COCOM Secretariat by upgrading professional staff, translation services, data base maintenance, communications and facilities.

"(6) Agreement to strengthen COCOM so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the mutual benefit of all.";

(20) by inserting in subsection (j), as redesignated, after "other countries" the words ", including those countries not participating in the group known as the Coordinating Committee,", by striking "policy" and substituting in lieu thereof "policies", and by striking "section 3(9)" and inserting in lieu thereof "sections 3(9) and 3(10)"; and

(21) by inserting after "Munitions List" in paragraph (2) of subsection (k), as redesignated, "or the military use of any item on the COCOM List".

AMENDMENTS TO FOREIGN POLICY CONTROLS

SECTION 5. Section 6 of Pub. L. No. 96-72 is amended as follows:

(1) by deleting in subsection (c) "with such affected United States industries as the Secretary considers appro-

priate," and substituting in lieu thereof "as appropriate with affected United States industries";

(2) by inserting after the first sentence in subsection (f) "This section also does not authorize export controls on donations of articles, such as food and clothing, intended to be used to relieve human suffering, except to the extent that the President determines that such donations are in response to coercion against the proposed recipient or donor.";

(3) by striking in the first sentence of subsection (k) the word "commodity";

(4) by striking the second sentence of subsection (k) and substituting in lieu thereof "The Secretary shall clearly identify on the control list which goods and technical data and countries or destinations are subject to which types of controls under this section."; and

(5) by adding at the end of section 6 a new subsection as follows:

"(1) Sanctity of Contract.--The President shall not prohibit or curtail the export of any good or technology that is controlled under this section if such good or

technology is to be exported pursuant to a sales contract (1) entered into before the President places the export under control, and (2) the terms of which require delivery of the export within two hundred and seventy days after the control is imposed, except that the President may prohibit or curtail such export if he determines that not prohibiting or curtailing such export would prove detrimental to the overriding national interests of the United States."

AMENDMENTS TO SHORT SUPPLY CONTROLS

SECTION 6. Section 7 of Pub. L. No. 96-72 is amended by deleting in their entirety subsections (c), (e), (f), (h), (i), and (j), by deleting paragraphs (1) and (2) of subsection (d), by redesignating paragraph (3) of subsection (d) as subsection (c), and by redesignating subsection (g) as subsection (d).

AMENDMENTS TO PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS

SECTION 7. Section 10 of Pub. L. No. 96-72 is amended as follows:

(1) by striking in the first sentence of subsection (b) "10" and substituting in lieu thereof "14";

(2) by striking in subsection (c) "90" and substituting in lieu thereof "60"; and

(3) by inserting in paragraph (3) in subsection (f) after "the policies set forth in section 3 of the Act which would be furthered by denial," and before "and, to the extent consistent with the national security" the following:

"what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this Act,".

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AMENDMENTS TO VIOLATIONS PROVISIONS

SECTION 8. Section 11 of Pub. L. No. 96-72 is amended as follows:

(1) by inserting in paragraph (a) after "violates" the following "or conspires to or attempts to violate";

(2) by deleting in paragraph (1) in subsection (b) "exports anything contrary to" and substituting in lieu thereof "violates or conspires to or attempts to violate";

(3) by inserting in paragraph (1) in subsection (b) after "benefit of" the following, "or that the destination or intended destination of the goods or technology involved is", and by striking "restricted" and substituting in lieu thereof "controlled";

(4) by adding at the end of paragraph (1) in subsection (b) the sentence "For purposes of this subsection, a country to which exports are controlled for national security purposes is one identified pursuant to the determinations made in accordance with subsection 5(b) of this Act.";

(5) by inserting after paragraph (2) in subsection (b) the following paragraphs:

"(3) Whoever possesses any goods or technology with the intent to export them contrary to this Act or any regulation, order, or license issued thereunder shall be subject to the penalties as provided in subsection 11(a), except for a national security violation which would be subject to the penalties as provided in subsection 11(b)(1).

"(4) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.";

(6) by inserting after paragraph (2) in subsection (c) the following new paragraph:

"(3) Whoever violates any national security control imposed under section 5 of this Act, or any regulation, order, or license related thereto, may be subject to such controls on the importing of its goods or technology into the United States or its territories and possessions as the President may prescribe.";

(7) by inserting in subsection (e) after "subsection (c)" the words "or any amounts realized from the forfeiture of property interest or proceeds forfeited pursuant to subsection (f)", and by inserting after "refund any such penalty" the words "imposed pursuant to subsection (c)";

(8) by redesignating subsections (f) and (g) as subsections (g) and (i), respectively;

(9) by inserting after subsection (e):

"(f) Forfeiture of Property Interest and Proceeds.

-- (1) Whoever has been convicted of a national security export control violation under subsection (a) or (b) shall, in addition to any other penalty, forfeit to the United States:

"(A) any of his interest in, security of, claim against, or property or contractual rights of any kind in the goods or technology that were the subject of the violation;

"(B) any of his interest in, security of, claim against, or property or contractual rights of any kind in property that was used to facilitate the commission of the violation; and

"(C) any of his property constituting, or derived from, any proceeds obtained directly or indirectly as a result of such violations.

"(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture

under this section, are to be governed by the provisions of section 1963 of Title 18, United States Code.";

(10) by inserting after subsection (g), as redesignated, the following paragraph:

"(h) Prior Convictions. -- No person convicted of espionage under Title 18, United States Code, Section 793, 794, or 798, Title 50, United States Code, Section 783(b), or the Arms Export Control Act, Title 22, United States Code, Section 2778, shall be eligible, at the discretion of the Secretary, to apply for, or use, any export license during a period of up to 10 years from the date of conviction. Any outstanding export licenses in which such a person has an interest may be revoked, at the discretion of the Secretary, at the time of conviction."; and

(11) by striking "or" after "(d)," in the introductory language that precedes paragraph (1) in subsection-(i), as redesignated, and inserting after "(f)", ",(g) or (h)".

AMENDMENTS TO ENFORCEMENT PROVISIONS

SECTION 9. Section 12 of Pub. L. No. 96-72 is amended as follows:

(1) by striking in subsection (e) "section 5(h)" and substituting in lieu thereof "section 5(g)"; and

(2) by striking in subsection (e) "commodity".

AMENDMENTS TO ANNUAL REPORT

SECTION 10. Section 14 of Pub. L. No. 96-72 is amended as follows:

(1) in subsection (a) --

(a) by deleting paragraph (6) in its entirety, and by redesignating paragraphs (7)-(20) as paragraphs (6)-(19), respectively;

(b) by striking "section 5(f)" in paragraph (6), as redesignated, and substituting in lieu thereof "section 5(e)";

(c) by striking "section 5(f)(5)" in paragraph (7), as redesignated, and substituting in lieu thereof "section 5(e)(6)";

(d) by striking "section 5(g)" in paragraph (8), as redesignated, and substituting in lieu thereof "section 5(f)";

(e) by striking "section 5(h)" in paragraph (9), as redesignated, and substituting in lieu thereof "section 5(g)";

(f) by striking "section 4(e)" in paragraph 15, as redesignated, and substituting in lieu thereof "section 4(d)"; and

(2) by striking "section 5(i)" in subsection (c) and substituting in lieu thereof "section 5(h)".

AMENDMENTS TO EFFECT ON OTHER ACTS

SECTION 11. Section 17 of Pub. L. No. 96-72 is amended

(1) by striking the last sentence in subsection (c) and substituting in lieu thereof:

"For purposes of this subsection, the term 'controlled country' means any country to which exports are controlled under section 5 of this Act because of a

finding that a significant contribution to the military potential of that country would prove detrimental to the national security of the United States."; and

(2) by deleting in paragraph (2) of subsection (d), "that they are consistent with such published procedures, except".

AMENDMENTS TO AUTHORIZATION OF APPROPRIATIONS

SECTION 12. 50 U.S.C. App. §2417 is amended by striking paragraph (1) of section (b) and substituting in lieu thereof:

"(1) such sums as may be necessary for each of the fiscal years 1984, 1985, 1986, and 1987, and".

AMENDMENTS TO TERMINATION DATE

SECTION 13. Section 20 of Pub. L. No. 96-72 is amended by deleting "1983" and substituting "1987".

SECTION-BY-SECTION ANALYSIS
AND JUSTIFICATION

SECTION 1.

Paragraph (1) of this section amends section 2(3) of the Export Administration Act of 1979 (EAA or Act) to state that while both the private sector and the Federal Government should place a high priority on exports, this priority must be consistent with the economic, security, and foreign policy objectives of the United States. By contrast, the current Act states that it is important to the national interest of the U.S. that the private sector and the Government place a high priority on exports "which would strengthen the national economy". The current provision is inconsistent with the tone and concerns of the EAA because it implies that top priority should be given to exports, exclusive of other concerns. The amendment would clarify the importance of considering exports in the context of overall U.S. interests.

Paragraph (2) strikes a paragraph from the finding section, which is replaced with new paragraph (7), described below.

Paragraph (3) inserts a new paragraph in the EAA that describes the harmful effect foreign availability can have on U.S. national security interests. This finding focuses on the importance of eliminating foreign source availability of controlled goods and technology to make the export control system as effective as possible. This finding also provides a premise for the new corresponding policy declaration in section 3.

Paragraph (4) of Section 1 would insert new paragraph (7) into the EAA. This new paragraph notes that exporting goods and technology that contribute to the military capability of other countries has been detrimental to the security of the U.S. and its allies, and has led those nations to increase their defense budgets. This amendment highlights the consequences of failing to prevent or delay transfers of militarily sensitive technology. As such, it clarifies national security concerns and provides a better balance in the EAA findings between the advantages and disadvantages of export restrictions and export promotions.

SECTION 2.

Section 2 of this bill would amend Section 3 of the EAA by modifying paragraph (3) and adding new paragraphs (10), (13), and (14).

The modification of section 3(3) adds that it is the policy of the U.S. to negotiate bilaterally or multilaterally to eliminate the foreign availability of controlled goods and technology. This amendment reflects the importance of negotiating to restrict the export by other countries of controlled goods to proscribed countries.

New paragraph (10) states that it is the policy of the United States to seek arrangements with countries not members of COCOM that would restrict the export or re-export of U.S. goods and technology that are controlled for national security purposes. This paragraph is needed to address concerns about the diversion of dual use items to proscribed countries from countries not members of COCOM, and the importance of negotiations as a tool to protect U.S. goods and technology from unlawful export and re-export.

New paragraph (13) states that it is the policy of the United States to minimize the impact of foreign policy controls on existing contracts and on business activities in allied countries. U.S. businesses have complained that the unpredictability of foreign policy controls have caused them business losses by prohibiting them from completing existing contracts as well as by damaging their reputations as reliable suppliers. Foreign allies have complained about

the extraterritorial application of U.S. export laws. This policy statement notes that to the extent consistent with the underlying purpose of the foreign policy controls, the U.S. will attempt to minimize this impact. In addition, section 5(6) of this bill contains a sanctity of contract provision to provide the business community with additional protection.

New paragraph (14) recognizes that the Congress and the business community have urged the Commerce Department to develop new licensing mechanisms to ease trade controls for West-West trade. Under section 4 of the Act, the Secretary of Commerce already possesses the authority to require such licenses he believes will assist in the effective and efficient implementation of the Act. Thus, this policy would urge the Secretary to use that authority to develop new licences for the situation described herein.

SECTION 3.

Section 3 of this bill amends section 4 of the EAA. Paragraph (1) of section 3 modifies section 4(a)(2) of the EAA by deleting reference to the qualified general license.

This license has proven to be impractical to administer, has caused confusion in the business community, and delays in processing applications. Hence, references to the qualified general license in section 4 and in other sections of the EAA are deleted. Nonetheless, the Secretary expressly retains authority under this paragraph to issue licenses authorizing multiple exports.

Paragraph (2) of section 3 amends section 4(b) by striking the word "commodity" from the term "commodity control list." This deletion clarifies that controls are imposed not only on commodities on the commodity control list, but also on technical data described in technical data regulations.

Paragraph (3) of section 3 modifies the foreign availability test in section 4(c) of the Act from "significant quantities and comparable in quality" to "sufficient quantities and comparable in quality". This definition is now made consistent throughout the Act.

SECTION 4.

Section 4 amends section 5 of the EAA.

Paragraph (1) grants authority to the President to prohibit transfers of goods or technologies within the U.S. to embassies and affiliates of countries to which exports of these goods or technologies are controlled. This authority is necessary because sales within the U.S. to embassies may be rendering national security controls ineffective.

Paragraph (2) of section 4 deletes subsection 5(a)(2)(B); this provision is subsequently re-inserted in section 10(f)(3) of the EAA by section 7(4) of this bill. Section 5(a)(2)(B) refers to notification of applicants in connection with denials of licenses on national security grounds. Because the primary authority for export denial procedures is located in section 10 of the EAA, the provisions of section 5(a)(2)(B) more logically belong in section 10.

Paragraph (3) deletes the word "commodity" in the first sentence of section 5(c)(1). This clarifies that controls are imposed not only on commodities on the commodity control list, but also on technical data described in separate technical data regulations.

Paragraph (4) modifies the heading of section 5(d) to reflect the fact that this subsection refers to militarily critical goods as well as militarily critical technologies.

Paragraph (5) of this section modifies section 5(b)(2)(B) to include keystone materials. These materials properly belong on the militarily critical goods and technology list.

Paragraph (6) amends section 5(b)(5) by deleting the word "commodity" for reasons already explained.

Paragraph (7) provides that adequate export controls on militarily critical technology and keystone equipment shall be accompanied by a suitable reduction of controls on the products of that technology and equipment. It should not be necessary to maintain strict controls on those commodities which are not critical or integral to the process that has produced them. Thus, one constructive means of reducing export controls is to reduce those controls on the by-products of adequately controlled militarily critical technology and keystone equipment.

Paragraph (8) deletes subsection (e) of section 5. Subsection (e) refers to the qualified general license provision which was deleted earlier in this bill.

Paragraphs (9) and (10) amend the definition of foreign availability in sections 5(f)(1) and 5(f)(2) by substituting the words "comparable quality" for the words "sufficient quality." This change conforms the definition of foreign availability in section 5 to that contained in section 4. Moreover, it is difficult to determine what "sufficient quality" means in the context of the EAA, whereas "comparability" is intended to imply fungibility and is a better choice of words in the context of this provision.

Paragraph (11) of this bill clarifies that the mere capacity of a foreign country to produce items in sufficient quantity and of comparable quality to those controlled by the U.S. so as to render the controls ineffective does not in and of itself constitute foreign availability.

Paragraph (12) amends section 5(f)(4) by instructing the President actively to pursue negotiations rather than merely to take steps to initiate negotiations. This change is intended to emphasize the importance of negotiations.

Paragraph (13) amends the indexing section of the Act. Under present law the indexing section provides that regulations shall be issued permitting, where appropriate, annual increases in the performance levels of goods or technology subject to licensing requirements. Any good or technology no longer meeting the performance requirement is to be removed from the control list unless any agency objects, in which case the Secretary of Commerce shall consider that objection. Paragraph (13) modifies the indexing provisions by requiring the Secretary to consider as one factor in determining whether to remove a good or technology from control status the anticipated military needs of countries to which exports are controlled for national security purposes. Thus, the automatic nature of the indexing provision is modified by requiring the Secretary to take into account the anticipated military needs of potential adversaries.

Paragraph (14) makes a technical conforming amendment.

Paragraphs (15), (16) and (17) make minor editorial changes to section 5(i) in order to clarify existing ambiguities in the EAA.

Paragraphs (18) and (19) modify the section on multilateral export controls by strengthening the language

relating to U.S. negotiations with COCOM governments. The President is urged, among other matters, to negotiate to make COCOM function more effectively in controlling export trade, to improve the International Control List, to upgrade the Secretariat, to strengthen enforcement, and to provide sufficient funding.

Paragraph (20) relates to the new policy expressed in section 3 regarding diversion from countries not belonging to COCOM by urging the Secretary of State to conduct negotiations with these countries to restrict the export of goods and technologies that are controlled for national security purposes.

Paragraph (21) amends section 5 by noting that a diversion to significant military use may include the diversion not only of weapons and military equipment but may also include diversion of a dual use item on the COCOM List.

SECTION 5.

Section 5 amends section 6 of the EAA.

Paragraph (1) of section 5 amends section 6(c) of the EAA in a technical manner that eliminates ambiguity.

Paragraph (2) of section 5 amends section 6(f) of the EAA by inserting a new sentence that states that section 6(f) does not authorize export controls on donations of articles intended to be used to relieve human suffering, except to the extent that the President determines that such donations are in response to coercion of the proposed recipient or donor. This sentence is added to make the EAA consistent with the International Economic Emergency Powers Act.

Paragraphs (3) and (4) amend section 6(k) by deleting the word "commodity" in the phrase "commodity control list" and by striking the second sentence of section 6(k) and substituting in lieu thereof, "The Secretary shall clearly identify on the control list which goods and technical data and countries or destinations are subject to which types of controls under this section." This amendment clarifies that technical data are controlled under regulations that are separate from the commodity control list.

Paragraph (5) adds a new subsection to section 6 of the Act that provides for the sanctity of contracts already in existence at the time the President imposes export controls

for reasons of foreign policy. This provision only applies to contracts the terms of which require delivery of the good or technology that is the subject of control within 270 days after the control is imposed. This 270-day period is the same as that provided for agricultural commodities in the Futures Trading Act of 1982. The President may nonetheless prohibit or curtail exports if he determines that not prohibiting or curtailing these exports would prove detrimental to overriding national interests.

SECTION 6.

Section 6 amends section 7 of the EAA by deleting subsections (c), (e), (f), (h), (i), and (j) of section 7 in their entirety, deleting paragraphs (1) and (2) from subsection (d), and redesignating the remaining sections accordingly. These deletions remove from the Short Supply section of the Act all special provisions that relate to particular items. Specifically, section 6 of this bill deletes those special provisions relating to refined petroleum products, domestically produced crude oil, horses, red cedar, and recyclable metals. The bill also deletes those provisions relating to barter agreements. The President retains general authority to impose controls for

reason of short supply as he deems necessary. The bill also retains those provisions relating to trade controls on agricultural commodities, and the crude oil waiver provision that permits the President to export crude oil to meet U.S. supply obligations under the U.S.-Israeli supply agreement and the Agreement on an International Energy Program.

SECTION 7.

Section 7 amends section 10 of the EAA. Paragraphs (1) and (2) modify the procedures for processing export license applications. These paragraphs reduce from 90 days to 60 days the time granted to the Commerce Department to process a license that does not require interagency review, and gives to the Department of Commerce 14 days rather than 10 days to process a license after its receipt by the Commerce Department. This last change is needed because 10 days are inadequate to (a) screen licenses, (b) send applicants acknowledgement, and (c) determine the need for further documentation interagency review or COCOM review.

Paragraph (3) inserts in section 10(f)(3) that portion of the EAA which was deleted in section 5(a)(2)(B). As noted

earlier in this analysis, this provision more logically belongs in section 10 of the EAA than in section 5.

SECTION 8.

Section 8 amends section 11 of the EAA. Paragraphs (1) and (2) of this section include "conspiring to violate the Act" or "attempting to violate the Act" in the category of violations subject to the punishments described in sections 11(a) and 11(b)(1) of the EAA.

Paragraph (3) simplifies the showing that the government must make to prove a willful violation in Section 11(b)(1) of the EAA. The amended version would require the government to either show that the goods were destined for a proscribed country, or show that the defendant knew that the goods were for the benefit of a country to which exports are controlled for national security or foreign policy purposes.

Paragraph (4) of this section clarifies that "countries to which exports are controlled for national security purposes" are, for purposes of this subsection, those countries designated pursuant to section 5(b) of the EAA as proscribed destinations.

Paragraph (5) provides statutory authority to punish a person in possession of goods or technologies that are intercepted by law enforcement officials before an illegal export occurs, if the person intends to export the goods or technologies contrary to law. This paragraph would also allow enforcement officials to charge a person who is not involved in the act of making an illegal export, but who knowingly participates in stages of the crime.

Paragraph (5) adds a new paragraph to the EAA that reaffirms the current regulatory authority of the Secretary to define by regulation violations under the EAA.

Paragraph (6) of this section authorizes the President to prohibit offenders of the national security provisions of the EAA from importing goods or technology into the United States. The section provides a strong new penalty that would serve to deter and punish export control violations.

Paragraph (7) provides that property or proceeds that are forfeited by violators of national security controls shall be deposited into the general receipts of the Department of Treasury.

Paragraph (8) redesignates subsections (f) and (g) as subsections (g) and (i), respectively, to conform to the additions and deletions in this bill.

Paragraph (9) inserts a new criminal forfeiture provision that requires the forfeiture of goods or technology that are the subject of a national security export control violation and property that is used to facilitate the commission of such violation. The forfeiture provision would also reach the property constituting or derived from, directly or indirectly, any proceeds obtained as a result of the violation. It is well established that monetary gain is a primary motivating force in serious national security control export violations. This amendment will enable prosecutors to recoup the gain that violators might otherwise be able to shelter.

Paragraph (10) adds new section (h) to Section 11 of the EAA. Section (h) corrects a major omission in the present export control program. There have been cases that involve dangerous, illegal technology transfers, but that include no violation of the Act. Under this amendment, at the discretion of the Secretary of Commerce persons convicted for espionage or under certain sections of the Arms Export

Control Act could be barred from applying for or using export licenses for a period up to 10 years from date of conviction.

Paragraph (11) conforms redesignated subsection (i) to the additions and deletions in this bill.

SECTION 9.

Section 9 amends section 12 of the EAA.

Paragraph (1) redesignates the paragraphs to conform to the additions and deletions in the EAA resulting from this bill.

Paragraph (2) deletes the word "commodity" to conform with changes made by section 3(2) of this bill.

SECTION 10.

Section 10 amends section 14 of the Act. Paragraph (1) redesignates the paragraphs in the Act and effects one deletion to conform to the additions and deletions in other provisions of this bill. The other paragraphs redesignate

paragraphs of the Act to conform with changes made by this bill.

SECTION 11.

Section 11 amends section 17 of the EAA. Paragraph (1) redefines the term "controlled country" so that it is more appropriate for civil aircraft equipment than the existing definition, which relies on the definition contained in section 620(f) of the Foreign Assistance Act of 1961.

Paragraph (2) makes a technical change clarifying that, but for one exception, the procedures published pursuant to the Nuclear Non-Proliferation Act of 1978 (NNPA), rather than the EAA, govern export license applications referred to an interagency group pursuant to section 309(c) of the NNPA.

SECTION 12.

Section 12 amends section 18 of the EAA, which provides the authorization for appropriations to carry out the purposes of the EAA, to authorize such sums as may be

necessary for each of the fiscal years 1984, 1985, 1986, and 1987.

SECTION 13.

Section 13 amends section 20 of the EAA to extend it for 4 years.

